

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOSE PENA,

Plaintiff,

v.

**9:04-CV-589
(FJS/GHL)**

**WARREN BARKLEY, Superintendent,
Cape Vincent Correctional Facility;
B. MACKENZIE; SGT. BRESETT; and
CAPTAIN CRAWFORD, Cape Vincent
Correctional Facility Correctional Officers,
sued in their individual and official capacities,**

Defendants.

APPEARANCES

OF COUNSEL

JOSE PENA

Bronx, New York 10452
Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**
615 Erie Boulevard West, Suite 102
Syracuse, New York 13204-2455
Attorneys for Defendant

SENTA B. SIUDA, AAG

SCULLIN, Senior Judge

ORDER

On March 30, 2008, this Court issued an Order adopting Magistrate Judge Lowe's Report-Recommendation, granting Defendant Barkley's motion to dismiss the claims against him, granting Plaintiff leave to file an amended complaint to assert claims against additional Defendants, and instructing Plaintiff to

advise the Court and opposing counsel in writing that he agrees to

ABANDON AND WAIVE forever any and all claims he has with respect to the deprivation of his good-time credits arising out of the disciplinary proceeding he is challenging as a condition for his being permitted to proceed with his claims regarding the conditions of his confinement.

See Dkt. No. 30 at 2-3.

The Court advised Plaintiff that failure to file his amended complaint and/or his statement "abandoning and waiving" claims regarding the loss of his good-time credits within sixty (60) days from the filing date of the Order would result in the dismissal of this action. *See id.* at 4.

The Clerk of the Court received and filed Plaintiff's amended complaint on May 23, 2008. *See* Dkt. No. 32. Plaintiff, however, did not submit the statement that the Court had required.

By letter dated June 2, 2008, Defendants' counsel requested that the Court enter judgment dismissing this action in light of Plaintiff's failure to submit the statement "abandoning and waiving" claims related to the loss of his good-time credits. *See* Dkt. No. 33. Upon review of the file, the Court afforded Plaintiff an additional ten (10) days to submit the statement and, once again, advised him that his failure to comply would result in dismissal of this action. *See* Text Order dated June 2, 2008. Despite the Court's warning, Plaintiff has not submitted the required statement nor has he otherwise communicated with the Court regarding his obligation to do so.

Accordingly, for the above-stated reasons, the Court hereby

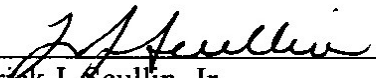
ORDERS that the Clerk of the Court shall enter judgment dismissing this action due to Plaintiff's failure to comply with the Court's direction that he file a written statement abandoning and waiving forever any and all claims he has with respect to the deprivation of his good-time credits arising out of the disciplinary proceeding he is challenging as a condition for his being permitted to proceed with his claims regarding the conditions of his confinement; and the Court

further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Court's Local Rules.

IT IS SO ORDERED.

Dated: June 21, 2008
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge